

EXHIBIT 4

Niemann, Robert

Baltimore, MD

September 14, 2007

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

5 IN RE: PHARMACEUTICAL : MDL NO. 1456

6 INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION

7 PRICE LITIGATION : 01-CV-12257-PBS

8 THIS DOCUMENT RELATES TO :

9 U.S. ex rel. Ven-a-Care of : Judge Patti B. Saris
0 the Florida Keys, Inc. :

10 the Florida Keys, Inc.

11 V •

12 Abbott Laboratories, Inc. : Chief Magistrate

13 NO. 06-GV-11337-PBS : Judge Marianne B.

15 Baltimore, Maryland

16 Friday, September 14, 2007

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18 videotaped Telephone Deposition of ROBERT NIEMANN

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<p style="text-align: right;">Page 282</p> <p>1 indication, you would agree with me that in December 2 of '95, you believed those assertions to be actually 3 true, correct?</p> <p>4 A. The fact that the AWP was in excess of 5 what was actually paid by providers?</p> <p>6 Q. And that there were numerous accounts of 7 prices for drugs charged in the Medicare program in 8 excess of the true marketplace?</p> <p>9 A. The IG data. Yes.</p> <p>10 Q. All right. And in the next sentence, the 11 document indicates that "the AAC methodology would be 12 added in order to obtain the advantage of those 13 discounts," correct?</p> <p>14 A. I'm sorry. Where are you, at the bottom 15 of the same page?</p> <p>16 Q. Yes, sir.</p> <p>17 A. Can obtain the advantage -- right. Right.</p> <p>18 Q. And in fact, that's why you were proposing 19 actual acquisition cost as an alternative -- as the 20 alternative methodology, correct?</p> <p>21 A. Yes. It appears to be.</p> <p>22 Q. If you can turn over to the next page.</p>	<p style="text-align: right;">Page 284</p> <p>1 to an actual acquisition cost, your proposal was that 2 the ingredient cost be reduced to actual acquisition 3 cost, and a dispensing fee be added in to account for 4 the services provided by the supplier, correct?</p> <p>5 A. By the pharmacy. Yes. I mean, I see that 6 for pharmacies. I'm not sure about infusion 7 suppliers. But I do see that for pharmacies.</p> <p>8 Q. If it were an infusion pharmacy, for 9 example. If the enterprise were itself a pharmacy 10 providing infusion services, presumably that pharmacy 11 would receive that dispensing fee, correct?</p> <p>12 A. I guess so. You're way over my head on 13 this. I mean, pharmacies get it. So you know, 14 whether you're also an infusion company, I guess you 15 would still -- if you're a pharmacy, and you meet all 16 the criteria, I guess you'd get it.</p> <p>17 Q. Would you agree with me that that addition 18 of a dispensing fee was intended to account for the 19 loss of margin to these providers in going from an 20 AWP system to an AAC system?</p> <p>21 MS. OBEREMBT: Objection.</p> <p>22 THE WITNESS: Yes. I think that's right.</p>
<p style="text-align: right;">Page 283</p> <p>1 Actually, it's a sentence that -- that moves from 2 page 3 to page 4. In this proposal, you would 3 suggest, am I correct, that pharmacies dispensing a 4 drug would be given a dispensing fee in the amount of 5 some dollars, not specified in this document, 6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. Is it your understanding that under the 9 methodology -- the rules applicable in 1995, 10 pharmacies did not receive a dispensing fee from the 11 Medicare program?</p> <p>12 A. That's how I remember it, that they did 13 not.</p> <p>14 Q. Because they weren't physicians, correct?</p> <p>15 A. Yes. That's what I remember.</p> <p>16 Q. And so, for example, an infusion pharmacy 17 would receive a payment for the drug, but would not 18 receive any sort of a payment for the services 19 provided in dispensing the drug?</p> <p>20 A. As we covered this morning, yes, I think 21 that's how I remember it.</p> <p>22 Q. And in going from average wholesale price</p>	<p style="text-align: right;">Page 285</p> <p>1 BY MR. COOK:</p> <p>2 Q. In the next paragraph, you indicate that 3 Medicare currently uses AWP prices to pay for drugs. 4 That's true, correct? We've gone over that over and 5 over.</p> <p>6 A. Yes.</p> <p>7 Q. I'm interested in the second sentence. 8 You write, "the AWP is universally recognized as a 9 sticker price set by manufacturers."</p> <p>10 I assume you wrote that because you felt 11 it to be accurate, correct?</p> <p>12 MS. OBEREMBT: Objection. I don't think 13 you've established that he wrote this particular 14 paragraph.</p> <p>15 THE WITNESS: That's exactly what I was 16 going to say. That's not the kind of sentence I 17 would usually write.</p> <p>18 BY MR. COOK:</p> <p>19 Q. That would likely have been written by 20 somebody else in your area?</p> <p>21 A. Well, I don't know.</p> <p>22 Q. Well, I'll just ask you, is AWP</p>

72 (Pages 282 to 285)